

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

CHRISTIAN A. MATHIS,

Plaintiff,

v.

Case No. 06-CV-13298-DT

CITY OF DETROIT, et al.,

Defendants.

ORDER INVITING A SUR-REPLY FROM PLAINTIFF

Currently pending before the court is Defendant Walter Bates's September 14, 2007 "Motion to Dismiss." Bates's motion alleges that Plaintiff Christian Mathis's claim against Bates is barred by the three-year statute of limitations. (*See generally* Bates's Mot.) In a footnote in Bates's reply in support of his motion to dismiss, he asserts that Plaintiff "has not served [Defendants] Jones, Jackson, or Staples through their counsel. Had Plaintiff done so, Jones, Jackson, and Staples would have joined in Bates' motion to dismiss." (Bates's Reply at 3, n.1.)

First, the court observes that there is no evidence on the record to suggest that Defendants Jones, Jackson or Staples were served via their counsel. If it is Plaintiff's contention that he has timely effectuated service upon Jones, Jackson and Staples via their counsel, the court invites Plaintiff to provide some manner of proof in that regard, as unsubstantiated assertions of timely service of process are insufficient.

Second, in light of Bates's assertion in his reply brief, it appears to the court that the claims against Defendants Jones, Jackson and Staples should be analyzed in the

same manner as the claim against Bates. In other words, even if Plaintiff can establish that he has timely served Jones, Jackson and Staples, the court is inclined to find credence in the heretofore unopposed proposition that the statute of limitations defense asserted in Bates's motion to dismiss applies also to Jones, Jackson and Staples. A sur-reply addressing this proposition may be of assistance to the court. Accordingly,

IT IS ORDERED that, if Plaintiff wishes to file a sur-reply to Bates's motion to dismiss, limited to the discrete two issues discussed above, he shall do so by

November 9, 2007.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: November 6, 2007

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, November 6, 2007, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522